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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

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| LESLIE H. DUNCAN, Individually And On Behalf of All Others Similarly Situated, Plaintiff, | CIVIL ACTION NO. 501CV319 |
| vs. | CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS |
| KENNETH L. LAY, JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY, JAMES V. DERRICK, JR., J. CLIFFORD BAXTER, MARK A. FREVERT, STANLEY C. HORTON, KENNETH D. RICE, RICHARD B. BUY, ARTHUR ANDERSEN, LLP, ANDERSEN WORLDWIDE SOCIETE COOPERATIVE, A SWISS COOPERATIVE, LJM CAYMAN, L.P., LJM2 CO-INVESTMENT, L.P., CHEWCO INVESTMENT, L.P., JOINT ENERGY DEVELOPMENT INVESTMENTS LIMITED PARTNERSHIPS, RAPTOR 1, RAPTOR II, RAPTOR III, RAPTOR IV, YOSEMITE SECURITIES TRUST, WHITEWING ASSOCIATES, L.P., OSPREY TRUST, NEW POWER HOLDINGS, INC., CORTEZ ENERGY SERVICES, LLC., ATLANTIC WATER TRUST, and MARLIN WATER TRUST, Defendants. | **JURY TRIAL DEMANDED** |

## NATURE OF THE ACTION

1. This is a securities fraud class action on behalf of purchasers of the publicly traded securities of Enron Corp. ("Enron" or the "Company") between October 19, 1998 and November 28, 2001, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Enron is engaged in the business of natural gas, electricity and communications to wholesale and retail customers. During the class period, Defendants issued favorable but false financial statements and made false and misleading statements about the Company's business. As a result of these false statements, the Company's stock traded, after adjusting for a 2-for-1 split in August of 1999, as high as $90.75. Certain Defendants took advantage of this artificial inflation by selling 7.3 million shares of Enron stock for proceeds approximating $434 million.

3. Subsequent to the Defendants sale, Enron revealed on October 16, 2001, that it would incur losses of $1 billion for certain divisions. Shortly thereafter, on November 8, 2001, and prior to the markets opening for that day, Enron announced that the previously issued audit reports and annual financial statements for the years ending December 31, 1997, 1998, 1999 and 2000 should no longer be relied on because Enron was restating its financial statements for those periods in addition to previously issued unaudited financial statements for the first and second quarter of 2001. In essence, Enron announced unequivocally that all its financial statements from December 31, 1997 through June 30, 2001, were materially false and that the audit reports covering the annual financial statements issued during that period likewise were unreliable. The November 8, 2001 restatement, described above, was later amended when the 10-Q for the third quarter ended September 30, 2001 was issued on November 19, 2001, but both reflected material errors that inflated Enron's net income and shareholder's equity for those years and the first two quarters of 2001.

4. By restating its annual financial statements for the years ending December 31, 1997, 1998, 1999 and 2000, in addition to restating its financial statements included in Forms 10-Q for the first two quarters of fiscal 2001, Enron unequivocally admitted that it had made public statements of a material nature which were false. The restatements Enron announced amount to more than $2.5

billion dollars of equity and earnings being changed. Even in a company of Enron's size, such a restatement can hardly be clarified as merely an oversight.

5. On October 17, 2001 the SEC requested that Enron voluntarily provide information regarding certain related party transactions. On October 31, 2001 the SEC opened a formal investigation of the matters that were the subject of recent press releases and were previously the subject of the SEC informal investigation.

6. Subsequent to the disclosures mentioned above, Enron announced via a SEC filing that it had until November 26, 2001 within which to refinance $690 million in debt or it would risk triggering nearly $4 billion in additional payments. Upon this news, Enron's stock dropped an additional 23% from its opening price that day to a new low of $6.99. More than 89 million shares of Enron stock changed hands that day.

7. On November 28, 2001, it was announced that the merger between Dynegy, Inc. ("Dynegy") and Enron that was announced on November 9, 20001 was no longer going to occur. In the announcement, Dynegy stated that Enron breached representations it made on November 9, 2001 when the takeover deal was initially negotiated and announced. Upon this announcement, Enron's debt was downgraded to "junk" status. This announcement, tied with a previous disclosures of Enron's in a recent regulatory filing raises serious doubts as to Enron's ability to "continue as a going concern."

8. The collapse of Enron is being called "one of the biggest corporate collapses in U.S. history." Furthermore, Robert Stoval, a senior strategist at Prudential securities with nearly 50 years of Wall Street experience characterizes the unraveling of Enron as being unmatched in the history of the SEC.

9. Upon these disclosures, Enron's stock entered a free-fall to a low of $0.61. This new value is some 94% below the Class Period high of $90.75. Over $72.2 billion in Enron's market capitalization has vanished.

## JURISDICTION AND VENUE

10. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

12. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Enron maintains its principal place of business in this State, does business with this District and many of the acts and practices complained of herein occurred in substantial part in this District.

13. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## PARTIES

14. Plaintiff, Leslie H. Duncan, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Enron at artificially inflated prices during the Class Period and has been damaged thereby. Leslie H. Duncan resides within the Eastern District, Texarkana Division of the U.S. Federal District Court.

15. Enron is an Oregon corporation with its principal place of business at 1400 Smith Street, Houston, Texas. Enron conducts electricity, natural gas and communications businesses. Enron is not named as a defendant in this action because it filed a voluntary petition for Bankruptcy under Chapter 11 of the Bankruptcy Code in the U.S. District Court for the Southern District of New York on December 2, 2001.

16. The following Defendants were senior officers and/or directors of Enron during the Class Period. Each had knowledge of adverse information and each profited individually by selling Enron stock during the Class Period.

(A) Defendant Kenneth L. Lay ("Lay") served at all times relevant hereto as a director of the Company and Chairman of the Board of Directors. Lay also served as the Chief Executive Officer until February 2001. During the Class Period, Lay sold 1,822,327 shares of Enron stock for insider trading proceeds of $100.0 million. In addition to his salary for 1998, 1999 and 2000, Lay also received bonus payments of $14.1 million because of Enron's performance.

(B) Defendant Jeffrey K. Skilling ("Skilling") served at all times relevant hereto as a director of the Company. Skilling also served as the Company's President and Chief Operating Officer until February 2001 when he was elevated to Chief Executive Officer. Skilling held the posts of President and CEO until his resignation in August 2001. During the Class Period, Skilling sold 1,134,958 shares of Enron stock for insider trading proceeds of $68.2 million. Along with receiving his salary for 1998, 1999 and 2000, Skilling received a bonus of $10.9 million based upon Enron's performance.

(C) Defendant Andrew S. Fastow ("Fastow") served as Enron's Chief Financial Officer from 1998 until his termination in 2001. During the Class Period, Fastow sold

561,423 shares of Enron stock for insider trading proceeds of $30.5 million. In addition to receiving performance bonuses from Enron, along with his salary for 1998, 1999 and 2000, Fastow received approximately $35 million as management fees from two partnerships, LJM Cayman, L.P. and LJM2 Co-Investment, L.P., where he served as managing director. These partnerships had related party transactions with Enron that were adverse to Enron's interests. The impact of each partnership upon Enron's announced restatement is set forth in Table 2, attached hereto as exhibit B. Fastow signed each Form 10-K during the Class Period as a principal accounting officer of Enron.

(D) Defendant Richard A. Causey ("Causey") at all relative times was the Executive Vice-President and Chief Accounting Officer of Enron. Causey signed each Form 10-K and Form 10-Q issued during the Class Period. During the Class Period, Causey sold 197,485 shares of Enron stock for insider trading proceeds of $13.3 million.

(E) Defendant James V. Derrick, Jr. ("Derrick"), since July 1999, has been an Executive Vice-President and General Counsel of Enron. Prior to July 1999, Derrick was Enron's Senior Vice-President and General Counsel. Derrick sold 230,660 shares of Enron stock during the Class Period resulting in insider trading proceeds of $12.7 million.

(F) Defendant J. Clifford Baxter ("Baxter") was Vice-Chairman of Enron since October 2000, and Chief Strategy Officer since June 2000. From June 1999 until June 2000, Baxter served as Chairman and Chief Executive Officer of Enron North America Corp. Prior to June 1999, Baxter served as Senior Vice-President, Corporate Development. Baxter sold 577,436 shares of Enron stock during the Class Period resulting in insider trading proceeds of $35.2 million.

(G) Defendant Mark A. Frevert ("Frevert"), since June 2000, served as Chairman and Chief Executive Office of Enron Wholesale Services. From March 1997 until being promoted in June 2000, Frevert served as Chairman and Chief Executive Officer of Enron Europe. In addition to receiving his salary for 1998, 1999 and 2000, Frevert received bonus payments of $4.3 million based upon Enron's reported performance. Also, Frevert sold 830,620 shares of Enron stock during the Class Period that resulted in insider trading proceeds of $50.3 million.

(H) Defendant Stanley C. Horton ("Horton"), at all relevant times, was Chairman and Chief Executive Officer of Enron Transportation Services. In addition to receiving his salary for 1998, 1999 and 2000, Horton received bonus payments of $2.9 million based upon Enron's reported performance. Additionally, Horton sold 738,846 shares of Enron stock during the Class Period that resulted in insider trading proceeds of $45.5 million.

(I) Defendant Kenneth D. Rice ("Rice"), since June 2000, has been Chairman and Chief Executive Officer of Enron Broadband Services, Inc. Prior to that, Rice was Chairman and Chief Executive Officer of ECT-North America from March 1997 to June 1999. In addition to receiving his salary for 1998, 1999 and 2000, Rice received bonus payments of $3.9 million. Additionally, Rice sold 1,159,870 shares of Enron stock during the Class Period resulting in insider trading proceeds of $74.4 million.

(J) Defendant Richard B. Buy ("Buy"), since July 1999, has been Executive Vice President and Chief Risk Officer. Prior to being promoted in July 1999, Buy served as Enron's Senior Vice-President and Chief Risk Officer beginning in March 1999. From January 1998 until March 1999, Buy was Managing Director and Chief Risk Officer of ETC.

Buy sold 54,874 shares of Enron stock during the Class Period resulting in insider trading proceeds of $4.3 million.

17. The Defendants referred to in paragraphs 16(a)-(j) are referred to herein as the "Individual Defendants."

18. The Individual Defendants' total insider selling during the Class Period is reflected as follows:

| INSIDER | SHARES SOLD | INSIDER PROCEEDS | AVERAGE SALE PRICE PER SHARE |
|---|---|---|---|
| Lay | 1,822,327 | $99,987,867 | $54.87 |
| Skilling | 1,134,958 | $68,229,028 | $60.12 |
| Rice | 1,159,870 | $74,376,944 | $64.13 |
| Frevert | 830,620 | $50,269,504 | $60.52 |
| Horton | 738,846 | $45,539,408 | $61.64 |
| Baxter | 577,436 | $35,200,808 | $60.96 |
| Fastow | 561,423 | $30,463,609 | $54.26 |
| Derrick | 230,660 | $12,656,238 | $54.87 |
| Causey | 197,485 | $ 13,329,743 | $67.50 |
| Buy | 54,874 | $ 4,325,309 | $78.82 |
| **TOTAL** | 7,308,499 | $434,378,458 | $59.43 |

19. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers

and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

20. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers of Enron, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

21. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (the "NYSE"), and governed by the provisions of the Federal Securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon

truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

22. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Individual Defendants had access to the adverse undisclosed information about Enron's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by the Company materially false and misleading.

23. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

24. Defendant Arthur Andersen, LLP, ("Andersen") served at all times relevant hereto as the independent auditor of Enron's financial statements for fiscal years ending December 31, 1997, 1998, 1999 and 2000 and issued audit reports for each of those years that have now been publicly admitted to being false and unreliable. Additionally, on June 19, 2001, Andersen consented

to the entry of an Order enjoining Andersen from violating §10(b) of the Exchange Act and Rule 10b-5 in SEC administrative proceeding No. 34-44444. Plaintiff alleges that Andersen's conduct and willful failure to perform its audits, as outlined below, represent Andersen's continued violation and contempt of SEC rules and orders.

25. Defendant Andersen Worldwide Societe Cooperative ("Andersen Worldwide") is a Swiss Cooperative of which Arthur Andersen, LLP is a member. It is believed that Andersen Worldwide, or its predecessor in interest, facilitated the audits of Enron's worldwide entities for the year-end financial statements dated December 31, 1997, 1998, 1999 and 2000.

26. (A) Defendant LJM Cayman, L.P. ("LJM1") is a private investment limited partnership that was formed in 1999 at the direction of Enron and/or one or more of the Individual Defendants. Defendant Fastow from the inception of LJM1 through July 2001 was the managing member of the general partners of LJM1. It is believed that LJM1 during part of, if not all of the Class Period, was a shareholder of Enron.

(B) Defendant LJM2 Co-Investment, L.P. ("LJM2") is a private investment limited partnership that was formed in 1999 at the direction of Enron and/or one or more of the Individual Defendants. Defendant Fastow from the inception of LJM2 through July 2001 was the managing member of the general partners of LJM2. It is believed that LJM2 during part of, if not all of the class period, was a shareholder of Enron.

(C) Defendant Chewco Investments, L.P. ("Chewco") is a limited partnership that was created at the direction of Enron and/or the Individual Defendants, and was under the control of either Enron and/or one or more of the Individual Defendants during the Class Period. Chewco was also a shareholder of Enron during the Class Period. As described in paragraphs 62 to 107, the transactions conducted by Chewco should have been included in the consolidated financial statements of Enron, and in some cases were detrimental to Enron. The limited partners of Chewco benefitted to Enron's detriment and should be required to disgorge those profits.

(D) Defendant Joint Energy Development Investments Limited Partnership ("JEDI") is a limited partnership that was created at the direction of Enron and/or the Individual Defendants and was under the control of Enron and/or one or more of the Individual Defendants during the Class Period. JEDI was created to take risk positions that were potentially detrimental to Enron along with other business activities. As described in paragraphs 62 to 107, the transactions conducted by JEDI should have been included in the consolidated financial statements of Enron, and resulted in Enron recording losses when the restatements referred to above were made public. The limited partners of JEDI benefitted to Enron's detriment and should be required to disgorge those profits.

(E) Defendants Raptor I, Raptor II, Raptor III and Raptor IV (collectively "Raptor") were entities created at the direction of Enron, the Individual Defendants and/or LJM2 and were under the control of Enron and/or one or more of the Individual Defendants during the Class Period. The Raptor entities were shareholders of Enron during part if not all of the Class Period. As described in paragraphs 62 to 107, the transactions conducted by Raptor should have been included in the consolidated financial statements of Enron, and in some cases were detrimental to Enron. The limited partners of Raptor have benefitted to Enron's detriment and should be required to disgorge those profits.

(F) Yosemite Securities Trust ("Yosemite") is a finance entity that facilitated Enron's ability to raise funds in the capital markets through the use of credit linked notes. Yosemite was under the direct control of Enron and/or one or more of the Individual

Defendants during the Class Period. Yosemite engaged in various financing activities by acquiring Enron's stock via a note receivable and then using those same shares as collateral for other loans. Yosemite then engaged in various transactions. As described in paragraphs 62 to 107 the transactions conducted by Yosemite during the Class Period should have been included in the consolidated financial statements of Enron, and some of those transactions were directly detrimental to Enron. The limited partners of Yosemite have benefitted to Enron's detriment and should have to disgorge those profits.

(G) Whitewing Associates, L.P. ("Whitewing") is a limited partnership formed by Enron and various investors through an entity named Osprey. Whitewing is currently an unconsolidated equity affiliate of Enron. During the Class Period, Whitewing was under either the direct or the indirect control of Enron and/or one or more of the Individual Defendants during the Class Period. The primary purpose of Whitewing was to invest in energy-related assets and other investments. As of November 16, 2001 Whitewing held assets with a book value of approximately $4.7 billion. This includes $1.3 billion in energy and related projects in Europe and South America, including European power plants and an electric distribution company in Brazil, approximately $600 million of merchant investments, approximately $600 million in demand notes due from Enron and other assets of $100 million. Whitewing also holds Mandatorily Convertible Junior Preferred Stock, Series B, and a contingent obligation of Enron to issue additional shares, if needed, which together have a combined book value of approximately $2.1 billion. During the Class Period, Whitewing has engaged in numerous transactions with Enron that should have been included in Enron's consolidated financial statements. As a direct result of these transactions, the various investors in Osprey have reaped profits amounting to tens of millions of dollars while Enron suffered. These profits must be disgorged and returned to Enron.

(H) Osprey Trust is beneficially-owned by a number of financial institutions and is a limited partner in Whitewing Associates, L.P. Osprey Trust was indirectly controlled by Enron and/or one or more of the Individual Defendants through its participation in Whitewing.

(I) New Power Holdings, Inc. ("NPW") was initially a wholly-owned subsidiary of Enron which eventually became owned by Enron and other strategic and financial investors. Enron and/or one or more of the Individual Defendants retained control over NPW until NPW went public. In October 2000, NPW became a public company. In two transactions, LJM2 made two direct and indirect investments in stock and warrants convertible into stock in NPW. In July 2000, LJM2 via a private placement, purchased warrants exercisable for NPW stock for $50 million. It is believed that LJM2 still owns these shares. As described in paragraphs 62 to 107 the transactions conducted by NPW should have been included in the consolidated financial statements of Enron. Prior to becoming a public company, the owners of NPW, including LJM2 and some of the Individual Defendants, directly benefitted from the transactions between NPW and Enron, prior to NPW going public. NPW and the Individual Defendants must be made to disgorge those profits so Enron is made whole.

(J) Cortez Energy Services, LLC ("Cortez")is a limited liability company formed by LJM2 and Enron. Enron transferred 5 million shares of NPW stock to Cortez. During the Class Period, Cortez was controlled by Enron, LJM2, and/or one or more of the Individual Defendants. As described in paragraphs 62 to 107 the transactions conducted by

Cortez should have been included in the consolidated financial statements of Enron. The members of Cortez have benefitted to Enron's detriment and should have to disgorge those profits.

(K) Atlantic Water Trust ("Atlantic") is an entity formed by Enron and "purportedly" unrelated institutional investors, investing through an entity named Marlin, for the purpose of acquiring and holding an interest in Azurix Corp. During the Class Period, Atlantic was controlled by Enron and/or one or more of the Individual Defendants. As described in paragraphs 62 to 107 Atlantic engaged in transactions to the detriment of Enron resulting in the "purportedly" unrelated institutional investors profiting from these transactions. These unrelated institutional investors should have to disgorge their profits. At present, Atlantic owns 67% of Azurix with Enron owning the remaining 33% outright.

(L) Marlin Water Trust ("Marlin") is an investing entity controlled indirectly by Enron through Enron's ownership interest in Atlantic. Marlin is capitalized by $915 million in debt and $125 million in equity. Marlin's debt is supported by the assets of Atlantic and a contingent obligation of Enron. During the Class Period, Marlin was controlled, either directly or indirectly, by Enron and/or one or more of the Individual Defendants.

27. Because of the intertwined financial and managerial relationship between the entities named in paragraphs 26(a) through (l) above, these entities shall collectively be referred to as the "Related Entities."

28. Each of the Defendants mentioned above is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Enron common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Enron's business, operations,

management and the intrinsic value of Enron common stock; (ii) enabled Enron and the Individual Defendants to:

(A) via a Prospectus Supplement dated November 24, 1998, sell $250 million in 6.95% notes;

(B) via a Prospectus dated February 12, 1999, sell 24 million shares of its common stock at $31.34 per share in a secondary offering;

(C) via a Prospectus dated May 19, 1999, sell $500 million in 7.375% notes;

(D) via a Prospectus dated August 10, 1999, sell 10 million exchangeable notes at $22.50 per note;

(E) via a Prospectus Supplement dated May 18, 2000, sell $500 million in Medium Term Notes;

(F) via a Prospectus dated June 1, 2000, sell $325 million in 7.875% notes;

(G) in February 2001 to privately place more than $1 billion in zero coupon convertible senior notes on favorable terms;

(H) enabled the Individual Defendants to sell more than $434.3 million of their personally held Enron common stock during the Class Period;

(I) allowed Fastow to pocket over $35 million in advisory fees; and,

(J) caused Plaintiff and other members of the Class to purchase Enron common stock at artificially inflated prices.

## PLAINTIFF'S CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of Enron between October 19, 1998 and November 8, 2001, inclusive (the

"Class Period") and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, officers and members of the Related Entities, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any of the Defendants have or had a controlling interest.

30. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Enron common shares were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Enron or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

31. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

32. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

33. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting Individual members of the Class. Among the questions of law and fact common to the Class are:

(A) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(B) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Enron; and

(C) to what extent the members of the Class have sustained damages and the proper measure of damages.

34. A class action is Superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by Individual Class members may be relatively small, the expense and burden of Individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## SUBSTANTIVE ALLEGATIONS

### Background Facts

35. Enron conducts electricity, natural gas and communications businesses. The Company produces electricity and natural gas, develops, constructs and operates energy facilities worldwide and delivers both physical commodities and financial and risk management services to customers.

36. From 1993 through early 1997, Enron's stock did not see significant appreciation as the company was seen merely as an energy company focused on natural gas. Upon beginning its diversification program in 1997, Enron started seeing its stock increase in price. Enron's diversification plan involved acquiring business in new areas, along with entering new areas on its own. As the Defendants promoted these opportunities and reported favorable financial results, Enron's stock price increased to $40 per share by mid-1999. Enron's stock began a meteoric rise in price in fiscal 2000. On January 3, 2000, Enron's shares were trading at $43.4375 and by

December 29, 2000 the price had nearly doubled to $83.125 per share. This rise was attributed to, among other things, interest and expectations for Enron's Broadband Services Division ("Broadband Services"), which was formed with the idea to trade bandwidth, and as described by Enron, "deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications." Investors did not know, however, that Broadband Services was not performing as the Defendants had led the market to believe. Indeed, Broadband Services was experiencing declining demand for bandwidth and Enron's efforts to create a trading market for bandwidth was not meeting with success as many of the market participants were not creditworthy.

37. To make matters worse regarding Broadband Services, Enron engaged in a series of complicated financial hedge transactions with two limited partnerships, LJM1 and LJM2. These transactions, which were not fully detailed for investors, involved hedging transaction in the broadband market and exposed Enron to increased risk and uncertainty given the weakening market for bandwidth.

38. To exacerbate matters further, Enron failed to consolidate these transactions, along with others as described fully herein, as required by Generally Accepted Accounting Principles ("GAAP").

**Materially False And Misleading**
**<u>Statements Issued During The Class Period</u>**

39. The Class Period begins on October 19, 1998. On that date, Enron issued a press release announcing its financial results for the fiscal year up to that date, along with revised *pro forma* financial numbers on a consolidated basis because of a recent acquisition that was finally completed. Those consolidated numbers included data concerning fiscal year-end December 31,

1997. That press release overstated net income by $79 million, or an overstatement of 75%, for 1997 along with understating total liabilities by $711 million and overstating equity by $309 million.

40. On January 19, 1999, the Company reported that for fiscal 1998 it earned $698 million, an increase of 36% from the previous year. Earnings Per Share ("EPS") increased 16% to $1.01. Defendant Lay commented on the results, stating in pertinent part "Across Enron, 1998 was an excellent year. . . . The operating success across Enron was reflected in an almost 40 percent shareholder return during the year, significantly above the very strong returns of the broader U.S. equity market." This release overstated net income by $139 million, or an overstatement of 20%, and EPS by $0.19 with the restated figures setting net income at $564 million and EPS at $0.82 per share.

41. On March 30, 1999, Enron filed its 10-K with the SEC for the fiscal year ending December 31, 1998. In it, Enron reported it had total revenues of $31.2 billion, total assets of $29.3 billion, total debt of $7.35 billion and shareholder's equity of $7.04 billion. These assets have now been restated and admitted as false. The corrected numbers reveal that total debt was understated by $561 million for a corrected total of $7.91 billion and shareholder's equity was overstated by $448 million for a corrected total of $6.6 billion.

42. On January 18, 2000, Enron issued a press release announcing its financial results for the fiscal year 1999. Defendant Lay stated "Our strong results in both the fourth quarter and the full year 1999 reflect excellent performance in all of our operating businesses." On March 30, 2000, Enron filed its 10-K with the SEC for the fiscal year ending December 31, 1999. For the year Enron reported net income of $893 million or $1.10 per share, total revenues of $40.1 billion, total assets of $33.3 billion and shareholder equity of $9.57 billion. These statements are materially false and misleading. Enron has since announced it overstated net income by $258 million, or 29%, for a

restated amount of $635 million and EPS of only $0.78 per share as opposed to the $1.10 per share previously reported. Additionally, total assets were overstated by $109 million with a restated total being $33.2 billion, total debt being understated by $685 million for total debt now equaling $8.8 billion and equity being overstated by $846 million to a new reduced total of $8.7 billion.

43. On January 22, 2001, Enron issued a press release announcing its financial results for the fiscal year 2000. Defendant Lay stated "Our strong results reflect breakout performances in all of our operations . . . Our shareholders had another excellent year in 2000, as Enron's stock returned 89 percent, significantly in excess of any major investment index." On April 2, 2001, Enron filed its 10-K with the SEC for the fiscal year ending December 31, 2000. For the year Enron reported net income of $979 million or $1.12 per share, total revenues of $100.7 billion, total assets of $65.5 billion and shareholder equity of $11.47 billion. Enron has now admitted that these amounts were false and has restated them. Enron has restated net income for fiscal 2000 by reducing it $137 million, or 14%, to $842 million for the year with EPS dropping $0.15 per share to a restated amount of $0.97 per share. Total assets have been reduced by $577 million to a restated total of $64.9 billion, total debt climbing $628 million to a restated total of $10.86 billion and total equity dropping $1.18 billion to a restated total of $10.28 billion.

44. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 31, 2001. Defendant Skilling commented on the results stating "Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating." On May 15, 2001, Enron filed its 10-Q with the SEC for the fiscal first quarter ending March 31, 2001. For the quarter, Enron reported net income of $425 million or $0.68, total revenues of $50.1 billion, total assets of $67.2

billion and shareholder equity of $11.72 billion. These amounts have now been restated as false. Total assets have been reduced by $2.08 billion to a restated total of $65.17 billion with total equity also dropping $1.2 billion to a restated total of $10.56 billion.

45. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. Defendant Skilling stated "Enron completed another quarter of exceptional performance." On August 14, 2001, Enron filed its 10-Q with the SEC for the fiscal second quarter ending June 30, 2001. For the quarter, Enron reported net income of $404 million or $0.45, total revenues of $50.6 billion, total assets of $63.3 billion and shareholder equity of $11.74 billion. These amounts have now been restated as false. Total assets have been reduced by $563 million to a restated total of $62.8 billion and total equity reduced by $.953 billion to a restated total of $10.79 billion.

## The Truth Emerges

46. Enron surprised the market on October 16, 2001 by announcing that it was taking non-recurring after-tax charges totaling $1.01 billion, or a $1.11 loss per diluted share in the third quarter of fiscal 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge stating, "After a through review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy business . . ."

47. The press release detailed the charge as follows: $287 million related to asset impairments recorded by Azurix Corp.; $180 million associated with the restructuring of Enron's Broadband Services Division; $544 million related to losses stemming from certain investments; and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

48. On October 17, 2001, an article in *The Wall Street Journal,* detailed the "structured finance arrangements with a previously disclosed entity" that was mentioned in Enron's earnings release. According to the article, the structured finance arrangements involved LJM1 and LJM2, the two limited partnerships managed by Fastow. The article states in part:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

49. On the next day, October 18, 2001, *The Wall Street Journal* reported on Fastow's financial arrangements with Enron. The article reported that, "Enron . . . shrank its shareholder equity by $1.2 billion as the company decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" tied to Fastow. In pertinent part, the article stated:

> According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

50. Responding to the news that Enron was eliminating more than $1 billion of shareholder equity and that it might impact the Company's credit rating, the price of Enron common stock declined from $32.20 per share to $29.00 per share on heavy trading volume on October 18, 2001. As the market continued to digest the information, Enron's stock continued its downward spiral.

51. As Enron admitted on November 8, 2001, the Company had failed to follow Generally Accepted Accounting Practices in the preparation of its financial statements for 1997, 1998, 1999, 2000 and the first two quarters of 2001. On that day, Enron issued a press release to disclose that it would restate – ***i.e. admit as materially false and misleading*** – the annual and quarterly financial results it had posted for 1997 through June 30, 2001. In the release, Enron stated:

> Enron Corp. is providing information to investors concerning several important matters: A required restatement of prior period financial statements to reflect (1) recording the previously announced $1.2 billion reduction to shareholders' equity reported by Enron in the third quarter of 2001; and (2) various income statement and balance sheet adjustments required as the result of a determination by Enron and its auditors . . . that three unconsolidated entities should have been consolidated in the financial statements pursuant to generally accepted accounting principles.
>
> Enron intends to restate its financial statements for the years ended December 31, 1997 through 2000 and the quarters ended March 31 and June 30, 2001. As a result, the previously-issued financial statements for these periods and the audit reports covering the year-end financial statements for 1997 to 2000 should not be relied upon.

## Generally Accepted Accounting Principles (GAAP)

52. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. Regulation S-X (17C.F.R. §210.4-01(a)(1)), states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

53. Moreover, pursuant to §13(b)(2) of the Exchange Act, Enron was required to "(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect

the transactions and dispositions of the assets of the issuer; (B) and devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that - (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles."

54. GAAP, as set forth in Accounting Research Bulletin ("ARB") No. 51 and as amended by FASB Statement of Financial Accounting Standards ("SFAS") No. 94, requires consolidation of all majority-owned subsidiaries unless control is temporary or does not rest with the majority owner. ARB No. 51 ¶1 states in part:

> There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group directly or indirectly has a controlling financial interest in other companies.

55. GAAP provides that certain qualifying Special Purpose Entities ("SPE") do not have to be consolidated. SFAS No. 125 sets forth criteria for a qualifying SPE that must be met, including that it is a legal entity whose activities are limited by legal documents establishing the SPE to: (i) hold title to transferred assets; (ii) issue beneficial interests; (iii) collect cash proceeds from the assets and reinvest or distribute to holders of interests; and (iv) distribute proceeds to holders; and also it, the SPE, must have standing apart from the transferor. SFAS No. 125 ¶26. See also FASB Emerging Issues Task Force Abstracts ("EITF") No. 84-30; 96-20; and 96-21 and various other technical issues related to SPEs in Appendix D to the EITF.

56. Enron violated each of the following financial accounting and reporting concepts:

(A) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(B) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(C) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(D) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(E) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(F) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(G) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(H) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

57. On November 9, 2001 and subsequently, Enron Corp. has provided the following information to investors concerning several important matters:

(A) A required restatement of prior period financial statements to reflect: (1) recording the previously announced $1.2 billion reduction to shareholders' equity reported by Enron in the third quarter of 2001; and (2) various income statement and balance sheet adjustments required as the result of a determination by Enron and its auditors (which resulted from information made available from further review of certain related-party transactions) that three unconsolidated entities should have been consolidated in the financial statements pursuant to GAAP. The restatement is outlined in Exhibit 1, attached hereto.

(B) Enron has restated its financial statements for the years ended December 31, 1997 through 2000 and the quarters ended March 31 and June 30, 2001 on two occasions.

Enron stated on November 9, 2001 that the previously-issued financial statements for these periods and the audit reports covering the year-end financial statements for 1997 to 2000 should not be relied upon;

(C) The accounting basis for the $1.2 billion reduction to shareholders' equity mentioned above;

(D) That a Special Committee was appointed by Enron's Board of Directors, to review transactions between Enron and related parties. The Special Committee has engaged the law firm of Wilmer, Cutler and Pickering and the accounting firm of Deloitte & Touche to assist it in its investigation;

(E) Information regarding the LJM1 and LJM2 limited partnerships formed by Enron's then Chief Financial Officer, the former CFO's role in the partnerships, the business relationships and transactions between Enron and the partnerships, and the economic results of those transactions as known thus far to Enron, which are outlined in Exhibit 2, attached hereto; and

(F) Transactions between Enron and other Enron employees.

58. On November 28, 2001, in announcing the termination of the merger, Dynegy, Inc. stated that Enron had failed to live up to the "representations, warranties, covenants and agreements in the merger agreement, including the material adverse change provision."

59. In conjunction with this announcement, Enron's debt was reduced to "junk" status by three credit rating agencies, thereby triggering various debt guarantee provisions, discussed more fully below, requiring Enron to now pay in excess of $3.9 billion in debt that it guaranteed but had not disclosed prior to November 7, 2001. The price of Enron stock collapsed again on this announcement by dropping more than $3.00 per share and closing at 61 cents per share.

60. The restatements discussed below affect prior periods. After taking into account Enron's previously disclosed $1.2 billion adjustment to shareholders' equity in the third quarter of 2001, these restatements have no effect on Enron's current financial position.

61. As used herein, "Enron" means Enron Corp. or one or more of its subsidiaries or affiliates. The dollar amounts and percentages set forth herein and in the attached tables are rounded amounts and percentages.

**Background on Special Purpose Entities and Related-Party Transactions**

62. Enron, like many other companies, utilizes a variety of structured financings in the ordinary course of its business to access capital or hedge risk. Many of these transactions involve "special purpose entities," or "SPEs." Accounting guidelines allow for the non-consolidation of SPEs from the sponsoring company's financial statements in certain circumstances. Accordingly, certain transactions between the sponsoring company and the SPE may result in gain or loss and/or cash flow being recognized by the sponsor, commonly referred to by financial institutions as "monetisation."

63. LJMl and LJM2 (collectively "LJM") are private investment limited partnerships that were formed in 1999. Andrew S. Fastow, then Executive Vice President and Chief Financial Officer of Enron and an Individual Defendant, was (from inception through July 2001) the managing member of the general partners of LJM1 and LJM2. Enron believes that the LJM partnerships have as limited partners a significant number of institutions and other investors that are not currently identified to be related parties to Enron.[1]

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[1]Press coverage indicates that at least the following institutions participated in the profits earned including, but not limited to California Public Employee Retirement System and the Arkansas Public Employee Retirement System.

## Restatement of Prior Period Financial Statements

64. Enron has announced that it will restate its financial statements from 1997 to 2000 and the first and second quarters of 2001 to: (1) reflect its conclusion that three entities did not meet certain accounting requirements and should have been consolidated, (2) reflect the adjustment to shareholders' equity, and (3) include prior-year proposed audit adjustments and reclassifications (which were previously determined to be immaterial in the year originally proposed). Specifically, Enron has concluded that based on current information:

(A) The financial activities of Chewco, a related party which was an investor in JEDI, should have been consolidated beginning in November 1997.

(B) The financial activities of JEDI, in which Enron was an investor and which was consolidated into Enron's financial statements during the first quarter of 2001, should have been consolidated beginning in November 1997.

(C) The financial activities of a wholly-owned subsidiary of LJM1, which engaged in derivative transactions with Enron to permit Enron to hedge market risks of an equity investment in Rhythms NetConnections, Inc., should have been consolidated into Enron's financial statements beginning in 1999.

65. The precise effects of the restatements on net income and stockholders' equity are outlined in Exhibit 1, attached hereto.

66. **Restatement Number 1.** Enron's decision that Chewco should be consolidated beginning in November 1997 because Chewco did not meet the accounting criteria to qualify as an unconsolidated SPE. As a result of Chewco's failure to meet the criteria, JEDI, in which Chewco was a limited partner, also did not qualify for nonconsolidation treatment. Because of those consolidations, Enron's prior-year reported debt amounts will be increased by both JEDI's and

Chewco's borrowings. The net effect reduced Enron's prior-years' reported net income and shareholders' equity amounts. In addition, Enron's net income was reduced for specific JEDI revenues previously allocated to Chewco, relating to the appreciation in value of Enron stock, which eliminate upon consolidation. This, in effect, reduced Enron's share of JEDI's earnings.

67. **Restatement Number 2.** Enron's decision that the LJM1 subsidiary should be consolidated in 1999 and 2000 because that subsidiary did not qualify for nonconsolidation treatment because of inadequate capitalization. In 1999 Enron engaged in a series of transactions involving a third party and LJM1. The effect of the transactions was (1) Enron and the third party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on that day, (2) LJM1 received 6.8 million shares of Enron common stock subject to certain restrictions, 3.1 million shares of which it contributed to the LJM1 subsidiary and (3) Enron received a note receivable from LJM1, which was repaid in December 1999, and certain financial instruments hedging Enron's investment in the stock of Rhythms NetConnections, Inc. Enron recorded the assets received and equity issued at estimated fair value. In connection with the transactions, LJM1 agreed that Mr. Fastow would have a pecuniary interest in such Enron common shares and would be restricted from voting on matters related to such shares. In March 2000, Enron and LJM1 entered into an agreement to terminate the financial instruments. In connection with this agreement, Enron received the 3.1 million shares of Enron common stock held by the LJM1 subsidiary. A put option, which was originally entered into in the first quarter of 2000 and gave LJM1 the right to sell shares of Enron common stock to Enron at a strike price of $71.31 per share, was terminated under this agreement. In return, Enron paid approximately $26.8 million to LJM1. Consolidation had the effect of reducing Enron's net income in 1999 and 2000 and shareholders' equity in 1999 and increasing shareholders'

equity in 2000, thus eliminating the income previously recognized by Enron on these derivative transactions.

68. **Restatement Number 3.** Enron's previously announced disclosure of a $1.2 billion reduction to shareholders' equity in the third quarter of 2001, resulted from the correction of an accounting error made in the second quarter of 2000 and in the first quarter of 2001. The details of the $1.2 billion restatement are set forth in paragraphs 66 to 68 below.

69. **Restatement Number 4.** The restatements also included prior-year proposed audit adjustments and reclassifications which were determined by Enron and AA to be immaterial in the year originally proposed.

**Accounting Basis for $1.2 Billion Reduction in Shareholders' Equity**

70. Enron's previously-announced $1.2 billion reduction of shareholders' equity primarily involved the correction of the effect of an accounting error made in the second quarter of 2000 and in the first quarter of 2001. As described in more detail below, four SPEs known as Raptor I-IV (collectively, "Raptor") were created in 2000 to permit Enron to hedge market risk in certain of its investments (LJM2 invested in these entities, but the related-party nature of the transaction, according to Enron, is not relevant to the accounting correction). As part of the capitalization of these entities, Enron issued common stock in exchange for a note receivable. Enron increased notes receivable and shareholders' equity to reflect this transaction. Under GAAP, the note receivable offsets the increase in the amount of increased common stock amounts which results in no net change to shareholders' equity. The net effect of this initial incorrect accounting entry was to overstate both notes receivable and shareholders' equity by approximately $172 million in each of the second quarter, third quarter, and year-end financial statements of Enron for the year 2000.

71. In the first quarter of 2001, Enron entered into contracts with Raptor that could have obligated Enron to issue Enron common stock in the future in exchange for notes receivable. Enron accounted for these transactions using the incorrect accounting treatment described in the preceding paragraph. This resulted in an additional overstatement of both notes receivable and shareholders' equity by $828 million. As a result of these errors, shareholders' equity and notes receivable were overstated by a total of $1 billion in the unaudited, but reviewed, financial statements of Enron at March 31 and June 30, 2001.

72. In the third quarter of 2001, Enron purchased LJM2's equity interests in Raptor for $35 million. As previously discussed, Enron accounted for this transaction as a reduction to Enron shareholders' equity and notes receivable by $1.2 billion. Enron recorded a $200 million equity reduction (which was part of the $1.2 billion reduction) related to the excess of the fair value of contracts deliverable by Enron over the notes receivable recorded in shareholders' equity, as adjusted.

## **The LJM Limited Partnerships and Transactions with Enron**

73. As discussed above, LJM1 and LJM2 are private investment limited partnerships. Enron is, or created and controls the entity that is the general partner in LJM1 and California Public Employee Retirement System is a limited partner in LJM1. Fastow created and, during most of the Class Period was the general partner's managing partner of LJM2. Furthermore, it is believed that under the LJM1 and LJM2 limited partnership agreements, the general partners are entitled to receive a percentage of the profits in excess of their portions of total capital contributed to the partnerships depending upon the performance of the partnerships' investments. It is also believed that the general partners are entitled to receive annual management fees based in part on formulas

that take into account the total amount of capital committed and/or invested by the limited partners. Enron has disclosed that Mr. Fastow received in excess of $30 million relating to his LJM management and investment activities. Enron disclosed that the initial capital commitments to LJM1 were $16 million, and the aggregate capital commitments to LJM2 were $394 million.

74. LJM1 and LJM2 were described to the Enron Board of Directors as potential sources of capital to buy assets from Enron, potential equity partners for Enron investments, and counter parties to help mitigate risks associated with Enron investments. The Board also was informed that LJM1 and LJM2 intended to transact business with third parties. Prior to approving Mr. Fastow's affiliation with LJM1 and LJM2, the Board determined that Mr. Fastow's participation in the partnerships would not adversely affect the interests of Enron. The Board approved the initial transaction with LJM1 and recognized that Enron might (but was not required to) engage in additional transactions with LJM1.

75. The Board directed that certain controls be established relating to Mr. Fastow's involvement with the partnerships and transactions between Enron and the partnerships. The Board required review and approval of each transaction by the Office of the Chairman, the Chief Accounting Officer and the Chief Risk Officer. The Board also provided the Chairman of the Board with the authority to require Mr. Fastow to resign from the partnerships at any time, and directed that the Audit and Compliance Committee conduct annual reviews of transactions between Enron and LJM1 and LJM2 that were completed during the prior year. It is now apparent that these controls were either inadequately designed or were not implemented because of the needed restatements to properly reflect Enron's transactions with LJM1 and LJM2.

76. Enron disclosed that effective July 31, 2001, Mr. Fastow sold his interests in LJM1 and LJM2 to Michael J. Kopper, and that Mr. Fastow ceased to be the managing member of their

general partners. Prior to that date, Mr. Kopper reported to Mr. Fastow as a non-executive officer of an Enron division. Enron disclosed that Mr. Kopper resigned from Enron immediately before purchasing Mr. Fastow's interests in LJM2. Mr. Fastow is no longer employed by Enron.

**General Summary of LJM Transactions**

77. From June 1999 through September 2001, Enron and Enron-related entities entered into 24 business relationships in which LJM1 or LJM2 participated. These relationships were of several general types, including: (1) sales of assets by Enron to LJM2 and by LJM2 to Enron; (2) purchases of debt or equity interests by LJM1 or LJM2 in Enron-sponsored SPEs; (3) purchases of debt or equity interests by LJM1 or LJM2 in Enron affiliates or other entities in which Enron was an investor; (4) purchases of equity investments by LJM1 or LJM2 in SPEs designed to mitigate market risk in Enron's investments; (5) the sale of a call option and a put option by LJM2 on physical assets; and (6) a subordinated loan to LJM2 from an Enron affiliate. The financial results of these transactions are summarized in Exhibit 2, attached hereto.

78. In June 2000, LJM2 purchased dark fiber optic cable from Enron for a purchase price of $100 million. LJM2 paid Enron $30 million in cash and the balance in an interest-bearing note for $70 million. Enron recognized $67 million in pre-tax earnings in 2000 related to the asset sale. Pursuant to a marketing agreement with LJM2, Enron was compensated for marketing the fiber to others and providing operation and maintenance services to LJM2 with respect to the fiber. LJM2 sold a portion of the fiber to industry participants for $40 million, which resulted in Enron recognizing agency fee revenue of $20.3 million. LJM2 sold the remaining dark fiber for $113 million in December 2000 to an SPE that was formed to acquire the fiber. In December 2000, LJM2 used a portion of the proceeds to pay in full the note and accrued interest owed to Enron. At the time of LJM2's sale of the fiber to the SPE, Enron entered into a derivative contract which served as

credit support for the benefit of some of the debt holders of a third-party investor in the SPE. This credit support provided the lender with a specified rate of return. As a result, Enron's credit exposure under the $70 million note was replaced with $61 million in remaining exposure under the derivative contract. LJM2 earned $2.4 million on its resale of the fiber.

**Purchases of Equity/Debt in Enron-Sponsored SPEs**

79. Between September 1999 and December 2000, LJM1 or LJM2 purchased equity or debt interests in nine Enron-sponsored SPEs. LJM1 and LJM2 invested $175 million in the nine SPEs. These transactions enabled Enron to monetize assets and generated pre-tax earnings to Enron of $2 million in 1999.

80. Enron disclosed that LJM received cash of $15 million, $64 million and $53 million in 1999, 2000 and 2001, respectively, relating to its investments in these entities. In three instances, third-party financial institutions also invested in the entities. LJM invested on the same terms as the third-party investors. In one of these nine transactions, Enron entered into a marketing agreement with LJM2 that provided Enron with the right to market the underlying equity. This arrangement gave Enron profit potential in proceeds received after LJM2 achieved a specified return level. In six of these nine transactions, Enron repurchased all or a portion of the equity and debt initially purchased by LJM.

81. The SPEs owned, directly or indirectly, a variety of operating and financial assets. For example, Defendant Yosemite was a finance entity which facilitated Enron's ability to raise funds in the capital markets through the use of credit-linked notes, a standard financing arrangement offered by investment banks. Defendant Osprey Trust is beneficially-owned by a number of financial institutions and is a limited partner in Defendant Whitewing, an Enron unconsolidated affiliate. Enron is the other partner. Whitewing purchased certain Enron investments for future sale.

82. In addition, as a result of these transactions, Enron was able to monetize equity interests with investment banks. These monetisations resulted in Enron's recognizing $146 million and $5 million in pre-tax earnings in 2000 and 2001, respectively, and $252 million in cash inflows, all in 2000.

## Investment in Enron Affiliates

83. In two transactions, LJM2 made direct and indirect investments in stock (and warrants convertible into stock) of Defendant NPW. NPW initially was a wholly-owned subsidiary of Enron, subsequently included other strategic and financial investors, and in October 2000, became a public company. NPW is engaged in the retail marketing and retail sale of natural gas, electricity and other commodities, products and services to residential and small commercial customers in the United States. In January 2000, LJM2 invested $673,000 in Cortez, a limited liability company formed by Enron and LJM2, and Enron contributed five million shares of NPW stock to Cortez. In July 2000, in a private placement, LJM2 purchased warrants exercisable for NPW stock for $50 million on the same terms as third-party investors. Enron disclosed that it believes LJM2 still owns these investments.

84. In September 1999, LJM1 acquired from Enron a 13% equity interest in a company owning a power project in Brazil for $10.8 million, and acquired redeemable preference shares in a related company for $500,000. Enron recognized a $1.7 million loss on the sale of these interests to LJM1. Enron recognized revenues of $65 million, $14 million and $5 million from a commodity contract with the company owning the power project in 1999, 2000 and 2001, respectively. As part of an exclusive marketing arrangement to sell LJM1's equity in the project to third-parties and to limit LJM1's return, Enron paid LJM1 a $240,000 fee in May 2000. In 2001, Enron repurchased

LJM1's 13% equity interest and the redeemable preference shares for $14.4 million. Enron currently owns this equity interest.

85. In December 1999, LJM2 paid Enron $30 million for a 75% equity interest in a power project in Poland. Enron recognized a $16 million gain in 1999 on the sale. Enron paid $750,000 to LJM2 as an equity placement fee. In March 2000, Enron repurchased 25% of the equity in the Polish power project from LJM2 for $10.6 million, and Whitewing acquired the remaining 50% from LJM2 for $21.3 million. Enron and Whitewing still own their respective equity interests.

86. In December 1999, LJM2 acquired a 90% equity interest in an Enron entity with ownership rights to certain natural gas reserves for $3 million. As a result, Enron recognized $3 million in revenue from an existing commodity contract. Subsequently, LJM2 assigned a portion of its ownership interest in the entity to Enron and Whitewing at no cost (to achieve certain after-tax benefits). Enron disclosed that it believes LJM2 continues to own its remaining interest.

**Portfolio SPEs**

87. Enron and LJM established a series of SPEs in order to mitigate market exposures on Enron investments, including investments in NPW, Rhythms NetConnections, Inc., and other technology, energy, and energy-related companies. LJM made $191 million in equity investments in five separate SPEs, three of which (Raptor I, II and IV) were also capitalized with Enron stock and derivatives which could have required the future delivery of Enron stock. Raptor III was capitalized with an economic interest in warrants convertible into stock of NPW. Enron subsequently engaged in hedging transactions with these SPEs, which included price swap derivatives, call options and put options. The derivatives and options generally were intended to hedge Enron's risk in certain investments having an aggregate notional amount of approximately $1.9 billion.

88. With respect to the four Raptor SPEs, Enron acquired LJM2's equity in the SPEs during the third quarter of 2001 for $35 million. Enron recognized pre-tax earnings (losses) relating to risk management activities of $119 million, $518 million and ($166) million in 1999, 2000 and 2001, respectively, including the effect of a $711 million pre-tax charge recognized in 2001, related to the termination of the Raptor SPEs. During 2000 and the nine months ended September 30, 2001, the Raptor SPEs hedged losses of $501 million and $453 million, respectively. The fifth SPE was used to hedge Enron's exposure arising from an investment in the stock of Rhythms NetConnections, Inc. However, it was subsequently determined that it did not meet the criteria to qualify for unconsolidated treatment.

89. In total, LJM1 and LJM2 invested $191 million and received $319 million (an estimated $95 million of which is non-cash value from the receipt of 3.6 million shares of Enron restricted stock) related to their investments in these five SPEs.

**Call Option**

90. In May 2000, Enron purchased a call option from LJM2 on two gas turbines, at the same time that LJM2 contracted to purchase the gas turbines from the manufacturer. Enron paid LJM2 $1.2 million for this right during a seven-month period in 2000. The call option gave Enron the right to acquire these turbines from LJM2 at LJM2's cost, which was $11.3 million. The call option was subsequently assigned from Enron to an Enron-sponsored SPE capitalized by a third-party financial institution. In December 2000, the call option was exercised by the SPE, and it acquired the turbines from LJM2 at cost.

**Transactions with LJM and Other Entities**

91. Enron sold its contractual right to acquire a gas turbine to a utility for $15.8 million in July 2000. Enron recognized a pre-tax gain of $3.5 million on the transaction. At the same time,

the utility entered into a put option agreement with LJM2 relating to the turbine under which the utility paid LJM2 $3.5 million. Subsequently, upon the execution of an engineering, procurement and construction contract with a wholly-owned subsidiary of Enron, the utility assigned the contractual right to acquire the gas turbine to that subsidiary.

92. In December 1999, Enron sold an equity investment in Enron Nigeria Barge Ltd. to an investment bank and provided seller financing. In June of 2000, LJM2 purchased this equity investment directly from the investment bank for $7.5 million and the assumption of the seller-financed note from Enron. In September 2000, LJM2 sold the equity investment to an industry participant for $31.2 million. The proceeds from LJM2's sale were used by LJM2 to repay the principal and interest on the note from Enron in the amount of $23.0 million. The remaining $8.2 million repaid LJM2's $7.5 million purchase price and provided a profit of $700,000 to LJM2.

**Transaction between LJM and Whitewing**

93. In December 1999, a wholly-owned subsidiary of Whitewing entered into a $38.5 million credit agreement with LJM2, the borrower. The loan had a term of one year and carried an interest rate of LIBOR+2.5%. The loan amount (including interest) of $40.3 million was repaid by LJM2 in 2000.

**Currently Outstanding LJM2 Transactions**

94. Enron believes that LJM2 currently has interests in six of the investments described above in which LJM2 originally invested $124 million, and that LJM2 has received cash inflows of $27 million from these investments. These investments include $23 million in equity in two Enron-sponsored SPEs, $32.5 million in equity in Osprey, $3 million in equity in an Enron affiliate, and $50.7 million in direct equity investments in NPW (representing two transactions).

95. Enron and LJM2 also entered into various agreements relating to cash management services, employee services, and office space provided by Enron to LJM2. In addition, Enron paid LJM2 a management fee for certain transactions, and other transaction fees described above. Enron also reimbursed LJM2 for transaction-related expenses (such as legal and tax fees and other costs) associated with some of the transactions described above.

**Other Transactions**

96. Like many other companies involved in trade and finance, Enron (through affiliates, subsidiaries, and SPEs) routinely engages in financing arrangements with third-party financial institutions, including commercial banks, investment banks and institutional investors, to fund acquisitions of assets or businesses, project development activities, and similar business arrangements. These activities are transacted with third parties using structures similar in some respects to the arrangements entered into with LJM. Enron provides credit support to the creditors of SPEs through the use of financial guarantees and hedging contracts. The payment of fees to third-party financial institutions and institutional investors, such as debt and equity placement fees and structuring fees, is common in debt and equity syndications.

**Other Employee Transactions**

97. From June 1993 through November 1997, an Enron subsidiary was the general partner of JEDI and a third-party, the California Public Employees' Retirement System ("CalPERS"), was the limited partner. In November 1997, JEDI made a liquidating distribution to Ca1PERS of $383 million. Concurrently, Chewco purchased a limited partnership interest in JEDI for $383 million, $132 million of which was financed by an interest-bearing loan from JEDI to Chewco, and $240 million of which was borrowed from a third-party financial institution (supported

by a guarantee from Enron). The restatement resulting from the Chewco transaction is discussed in 2A. Based on current information, Enron believes that a non-executive officer of an Enron division, Michael J. Kopper, was an investor in the general partner of Chewco and, at the time of the purchase, also was the manager of the Chewco general partner.

98. From December 1997 to December 2000, Chewco received distributions of $433 million from JEDI. Among other things, Chewco used a portion of these distributions to make repayments on its JEDI loan and to repay an additional borrowing from the third-party financial institution.

99. In December 1999, Chewco purchased a $15 million equity interest in Osprey, an Enron-sponsored SPE, from LJM1.

100. In March 2001, Enron purchased Chewco's limited partnership interest in JEDI for $35 million. In September 2001, Enron paid an additional $2.6 million to Chewco in connection with a tax indemnification agreement between JEDI, Chewco and Enron. Of the total purchase consideration, $26 million was used by Chewco to make a payment on the JEDI loan. Chewco currently has an outstanding balance due on the JEDI loan of $15 million. JEDI is currently a wholly-owned subsidiary of Enron.

101. Enron now believes that Mr. Kopper also was the controlling partner of a limited partnership that (through another limited partnership) in March 2000 purchased interests in affiliated subsidiaries of LJM1. Enron also now believes that four of the six limited partners of the purchaser were, at the time of the investment, non-executive officers or employees of Enron, and a fifth limited partner was an entity associated with Mr. Fastow. These officers and employees, and their most recent job titles with Enron, were Ben Glisan, Managing Director and Treasurer of Enron Corp.; Kristina Mordaunt, Managing Director and General Counsel of an Enron division; Kathy Lynn, Vice

President of an Enron division; and Anne Yaeger, a non-officer employee. Enron is terminating the employment of Mr. Glisan and Ms. Mordaunt. Ms. Lynn and Ms. Yaeger are no longer associated with Enron and Enron believes they are now associated with LJM2. At the time these individuals invested in the limited partnership, LJM1 had ceased entering into new transactions with Enron. However, some pre-existing investments involving LJM1 and Enron were still in effect, and Enron believes that these investments resulted in distributions or payments to LJM1 and to the limited partnership in which these individuals invested.

102. Pursuant to a services agreement among Enron, LJM1, and LJM2, Enron made available to LJM1 and LJM2 a portion of the time of certain of its employees to provide administrative assistance to the general partners of LJM1 and LJM2. Mr. Kopper, Ms. Lynn and Ms. Yaeger, among other Enron employees, were made available to LJM1 or LJM2 from time to time during their employment by Enron.

103. The effect of the above restatements were dramatic. Rather than earning $698 million and $1.01 per share in 1998, Enron's restated earnings fell to $585 million and $0.86 per share. Net income was lowered $186 million in 1999 with EPS dropped from $1.10 to $0.79. Net income was lowered $132 million in 2000 and EPS correspondingly fell from $1.12 to $0.97. The restatement increased Enron's debt by $561 million in 1998, $685 million in 1999 and $629 million in 2000. Shareholder's equity was reduced by $448 million for 1998, $834 million for 1999, $1.16 billion for 2000, $1.226 billion for first quarter 2001 and $929 million for second quarter 2001.

## ADDITIONAL REVELATIONS

104. On November 19, 2001 Enron filed its Form 10-Q for the quarter ending on September 30, 2001. That filing included the heretofore undisclosed information that should Enron not meet a debt obligation of $690 million due on November 27, 2001, Enron would likely be forced

to pay an additional $3.9 billion of debt that it guaranteed. This debt consists primarily of $2.4 billion of debt in Osprey Trust and $915 million of debt in Marlin. The Osprey Trust debt is supported by the assets within Whitewing. These assets include Enron Mandatorily Convertible Junior Preferred Stock, Series B, which is convertible into 50 million shares of Enron common stock, and a contingent obligation of Enron to issue additional shares, if needed, to retire such debt obligation. If Enron is unable to timely issue enough equity to offset the debt, Enron becomes responsible for any shortfall.

105. As of November 16, 2001 Whitewing held assets with a book value of approximately $4.7 billion, which includes approximately $600 million in demand notes due from Enron. Whitewing holds Mandatorily Convertible Junior Preferred Stock, Series B, as mentioned above, along with a contingent obligation of Enron to issue additional shares, if needed, which together have a combined book value of approximately $2.1 billion. This contingent obligation is in the form of a derivative instrument. As of September 30, 2001, the amount due Whitewing under this derivative totaled approximately $1.0 billion. Based on the subsequent decline in Enron's stock price through November 16, 2001 there exists an approximate $700 million pre-tax charge to earnings due to the shortfall in the recovery of Enron's book investment. This charge has not yet been recorded.

106. Another unconsolidated equity affiliate is Atlantic. As stated above, Atlantic was created by Enron and certain unrelated institutional investors using an entity called Marlin, for purposes of acquiring and holding an interest in Azurix Corp. Azurix's primary asset is Wessex Water Services Ltd., a regulated water utility in the United Kingdom. Atlantic currently owns 67% of Azurix with Enron owning the remaining 33% outright. Marlin was capitalized by approximately $915 million in debt and $125 million in equity. The Marlin debt is supported by Atlantic's assets

and a contingent obligation of Enron. The contingent obligation calls for the sale of Enron equity in an amount sufficient to retire the Marlin debt obligations. Should Enron not be able to sell enough equity, Enron becomes responsible for the shortfall.

107. Both the Marlin and Osprey debt obligations described above contain certain "trigger events" designed to protect the note holders. These events include: (i) an Enron senior unsecured debt rating below investment grade by any of the three major credit rating agencies concurrent with an Enron stock closing price of $59.78 per share or below in the case of Osprey and $34.13 per share or below in the case of Marlin; (ii) a cross default to Enron senior obligations in excess of $50 million and $100 million for Osprey and Marlin respectively; and (iii) the requirement that an amount sufficient to redeem the notes be deposited with a trustee 120 days prior to maturity dates of January 15, 2003 and July 15, 2003 for Osprey and Marlin respectively. As of November 19, 2001 the Enron closing stock price was $6.99 per share. In the event of a "trigger event" Enron has 21 days within which to file a registration statement for the issuance of equity to repay the notes and such registration statement has 90 days from the "trigger event" to become effective. Any Enron registration statement filed cannot become effective until Enron files its restated audited consolidated financial statements, which is not expected until the completion of the Special Committee investigation. In the event that Enron is unable to file its registration statement pursuant to a "trigger event" Enron must pursue a private placement of equity, if permitted. If Enron cannot timely sell equity in an amount sufficient to repay the notes, Enron is obligated to pay the difference in cash.

## EFFECT OF RESTATEMENT

108. The fact that Enron has restated its financial statements for 1997 through the second quarter of 2001 is an uncontested admission that the financial statements as originally issued were false and that the overstatement of revenues and income was material. Pursuant to GAAP, as set

forth in Accounting Principles Board Opinion ("APB") No. 20, the type of restatement announced by Enron was to correct for material errors in its previously issued financial statements. *See* APB No. 20, ¶¶7-13. The restatement of past financial statements is a prohibited method of recognizing most accounting changes because it dilutes confidence by investors in the financial statements; it makes it difficult to compare financial statements; and it is often difficult, if not impossible, to generate the numbers when restatement occurs. *See* APB No. 20 ¶14. Thus, GAAP provides that financial statements should only be restated in limited circumstances, i.e. when there is a change in the reporting entity, there is a change in accounting principles used or to correct an error in previously issued financial statements. Enron's restatement was not a change in reporting entity or a change in accounting principle. Enron's restatement was an unequivocal admission that the previously issued financial statements were materially in error and its public statements regarding those results were materially false and misleading.

109. The pervasive and profuse violations of GAAP by Enron that were necessary for it to continue to issue materially false financial statements for in excess of four years makes Andersen's false statements regarding the fair presentation of those statements in accordance with GAAP all the more egregious.

110. The violations of GAAP included, at a minimum, the failure to properly consolidate entities; the failure to disclose the magnitude of transactions and open positions with related parties; the failure to properly identify related parties; and, the failure to account for the impairment of long-lived assets.

111. Andersen, who represented themselves as being Enron's independent public accountants throughout the Class Period, was so reckless in failing to perform its duties that the so called audits and resulting audit reports were replete with GAAS violations.

## Violations of GAAS

112. GAAS, as approved and adopted by the American Institute of Certified Public Accountants ("AICPA"), defines the conduct of auditors in performing and reporting on audit engagements. Statements on Auditing Standards ("ASAS") are endorsed by the AICPA as the authoritative promulgation of GAAS.

113. Andersen consistently represented that it performed its audits in accordance with GAAS. Such representations were materially false, misleading and without a reasonable basis.

114. Andersen violated GAAS by, among other things, failing to expand or otherwise properly conduct its audits with respect to, inter alia, revenue recognition, accounts receivable, cash and related party transactions.

115. Indeed, as alleged herein, Andersen's so-called "audits" amounted to no audit at all, in that it violated that most fundamental requirements of GAAS, which require an auditor to obtain sufficient, competent evidence supporting the assertions in financial statements permitting reasonable assurance that such financial statements are free from material misstatements:

(A) "Most of the independent auditor's work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements." AU § 326.02.

(B) "The independent auditor's direct personal knowledge, obtained through physical examination, observation, computation, and inspection, is more persuasive than information obtained indirectly." AU § 326.21.

(C) Representations from management "are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." AU § 333.02

(D) "[W]ithout adequate attention to the propriety and accuracy of the underlying accounting data, an opinion on financial statements would not be warranted." AU § 326.16

116. Andersen knowingly or recklessly failed to qualify, modify or abstain from issuing its materially false and misleading audit opinions on Enron's 1997, 1998, 1999 and 2000 financial statements when it knew or recklessly turned a blind eye to the numerous adverse and "red flags" set forth below. Andersen violated at least the following provisions of GAAS:

(A) General Standard No. 2, which standard requires that in all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors. As disclosed on page 11 in Enron's proxy for the annual meeting that was held on May 1, 2001, AA's audit fees for the year ended December 31, 2000 were $ 25 million dollars but astoundingly, nonaudit services for the same period were $ 27 million. Given the significance of the total fees paid by Enron to AA for the year ended December 31, 2000, a reasonable person would question AA's independence and its ability to require Enron to properly record adjustments identified in the audit process at the risk of losing a $ 1,000,000 a week client.

(B) General Standard No. 3, which standard requires that due professional care is to be exercised in the performance of the examination and in the preparation of the report. As detailed above, Andersen failed to exercise due professional care in that it participated in the fraud by permitting Enron to treat the SPE's as nonconsolidated entity's when there was conclusive evidence to the contrary.

(C) Standard Of Field Work No. 2, which standard requires that a sufficient understanding of the internal control structure is to be obtained to plan the audit and to determine the nature, timing and extent of tests to be performed. As detailed above, Andersen knew that Enron's general controls were inadequate or nonexistent but improperly placed reliance on such controls and otherwise failed to disclose the glaring internal control weaknesses which were also a violation of Section 13 of the Securities Exchange Act.

(D) Standard Of Field Work No. 3, which standard requires that sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under examination. The dollar volume and the nature of the transactions between Enron and the SPE's would have required Andersen to perform a substantial amount of audit work related not only to those transactions but the financial capability of the SPE's to perform under the agreements in place between the SPE's and Enron which would have clearly indicated that the SPE's were shams absent Enron's continuing financial involvement and loan guarantees.

(E) Standard Of Reporting No. 3, which standard requires that informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report. As detailed above, Andersen failed to require Enron to disclose the magnitude of revenue derived from transactions with special purpose entities and parties related to Enron and the massive amount of debt that was directly or indirectly guaranteed by Enron. Disclosure would not have been a substitute for accounting for the transactions that were not in accordance with GAAP but would have allowed sophisticated readers of those financial statements question the reliability of the financial statements as to their compliance with GAAP.

(F) Standard of Reporting No. 1 which standard requires the audit report to state whether the financial statements are presented in accordance with GAAP. As detailed above, as a result of the announcement of Enron regarding the decision to restate its previously issued financial statements for each of the years ended December 31, 1997 through 2000 as well as the first two quarters of 2001, Andersen's audit reports are blatantly false and misleading in that they represented that Enron's 1997, 1998, 1999 and 2000 financial statements as originally issued were presented in accordance with GAAP when they were not for the reasons stated herein. Indeed, as recently announced by Enron, the financial statements for each of the years 1997 through 2000 and the first two quarters of 2001 were materially false and misleading as a result of failing to properly give accounting recognition to transactions with entities controlled by Enron (i.e., treating those transactions as if they had been conducted with independent third parties).

(G) Standard of Reporting No. 4, which standard requires that, when a opinion on the financial statements taken as a whole cannot be expressed, the reasons therefore must be stated. As detailed above, in light of Andersen's knowledge that Enron's financial statements included material amounts of revenues and expenses that should have been eliminated in consolidation, Andersen should have disclaimed an opinion or issued an adverse opinion on Enron's 1997,1998,1999 and 2000 financial statements or issued an adverse opinion stating that those financial statements were not fairly presented.

(H) SAS No.19, which standard requires that an auditor not substitute client representations for audit procedures necessary to form a reasonable basis as to the opinion being given on financial statements. As detailed above, Andersen could not have reached the opinions it rendered unless it simply relied on financial assertions by Enron management representations regarding the independent organization of the SPE's instead of corroborating all significant representations.

117. Andersen also violated SAS No. 82, *Consideration of Fraud in a Financial Statement Audit*, which required Andersen to "specifically assess the risk of material misstatement of the financial statements due to fraud and should consider that assessment in designing the audit procedures to be performed." AU § 316. Andersen failed to consider obvious risk factors indicating the existence of fraud, including:

> (A) "an excessive interest by management in maintaining or increasing the entity's stock price or earnings trends through the use of unusually aggressive accounting practices." AU § 316.17.
>
> (B) "significant, unusual or highly complex transactions, especially those close to year end, that pose difficult 'substance over form' questions." AU § 316.17.
>
> (C) "unusually rapid growth or profitability, especially compared with that of other companies in the same industry." AU § 316.17,

118. GAAS, as set forth in AICPA Professional Standards Volume 1, U.S. Auditing Standards - June 1, 1997, ("AU"), in section AU 411, describes "The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Auditor's Report." Section AU 411 states in pertinent part:

> The auditor's opinion that financial statements present fairly an entity's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles should be based on his judgement as to whether (a) the accounting principles selected and applied have general acceptance; (b) the accounting principles are appropriate in the circumstances; (c) the financial statements, including the related notes, are informative of matters that may affect their use, understanding, and interpretation . . .; (d) the information presented in the financial statements is classified and summarized in a reasonable manner, that is, neither too detailed nor too condensed . . .; and (e) the financial statements reflect the underlying events and transactions in a manner that presents the financial position, results of operations, and cash flows within a range of acceptable limits, that is, limits that are reasonable and practicable to attain in financial statements.

119. If Andersen had performed even some of the critical audit procedures, all of which are required by GAAS, it would have known that the 1997, 1998, 1999 and 2000 financial

statements were materially false and misleading because these financial statements were: (1) not presented in accordance with GAAP; (2) that the accounting principles applied did not have general acceptance; (3) the accounting principles were not appropriate under the circumstances; and (4) the financial statements did not accurately reflect the underlying events and transactions within any acceptable limit.

120. Throughout the Class Period, Andersen knew that the Company was in violation of SEC rules which (i) required Enron to devise and maintain a system of internal accounting controls sufficient to reasonably assure, among other things, that its transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP, and (ii) required it to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected all of the transactions of the Company.

121. Given the fact that Andersen audited the Company's financial statements since at least 1995, it had a thorough knowledge of the Company's financial history, accounting practices, internal controls, and business operations, Andersen either failed to:

(A) identify areas that needed special consideration or identified such areas and audited them in a manner that was so deficient it amounted to no audit at all;

(B) assess the conditions under which accounting data was produced, processed, reviewed, and accumulated within the organization;

(C) evaluate the reasonableness of management's representations and the Company's estimates or evaluated them in a manner which was so deficient that it amounted to no evaluation at all; or

(D) judge the appropriateness of the accounting principles applied and the adequacy of

> disclosures in the Company's financial statements. In this regard, Andersen failed to "recognize that management's selection and application of significant accounting policies, particularly those related to revenue recognition . . . may be misused." (AU 316A.19)

122. GAAS (AU 325.21) states that reportable conditions involve matters that relate to:

> significant deficiencies in design or operation of the internal control structure that could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

123. Reportable conditions must be reported by the auditor to the audit committee or to individuals with a level of authority and responsibility within a company equivalent to an audit committee, such as the board of directors. Andersen had a responsibility to disclose the clear and significant conflicts of interest that existed whereby a senior officer of Enron was the managing partner of the general partnership with which Enron conducted material transactions that personally benefitted the officer to the detriment of the Company.

**Related Party Transactions**

124. Andersen failed to follow procedures sufficient to provide reasonable assurance that Enron's reported revenues and positions with the SPE's were reported in accordance with GAAP.

125. Additionally, given the SEC's long standing position with respect to transactions with SPE's, Andersen should have obtained sufficient, competent audit evidence to corroborate management's assertions that the SPE's were independently managed so as to be able to pursue their own economic interests and sufficiently capitalized in order for nonconsolidation to be appropriate.

126. Andersen disregarded facts indicating heightened risk of fraud such as "significant pressure to obtain additional capital necessary to stay competitive, including the need for funds to finance major development expenditures." AU § 316.17.

127. Andersen disregarded facts indicating heightened risk of fraud categorized in GAAS as "significant related party transaction not in the ordinary course of business or with related entities not audited or audited by another firm." AU § 316.17.

128. Andersen failed to consider the risk factor particular to related party transactions stated AU § 334, Related Party Transactions, "large, unusual, or nonrecurring transactions or balances, ... particular[ly] . . . transaction recognized at or near the end of the reporting period." .

129. Andersen failed to take the steps prescribed in AU 334 "to identify related party relationships and transactions and to satisfy [themselves] concerning the required financial statement accounting and disclosure." AU § 334.01. To identify material transactions with related parties, the auditor should, among other things:

(A) "review filings by the reporting entity with the Securities and Exchange Commission and other regulatory agencies for the names of related parties and for other businesses in which officers and directors occupy directorship or management positions." Andersen knew that Andrew Fastow was the managing partner of the general partner of at least two SPE's with which Enron conducted a material amount of transactions with throughout 1997, 1998, 1999 and 2000.

(B) "review proxy and other material filed with the Securities and Exchange Commission and comparable data filed with other regulatory agencies for information about material transactions with related parties." AU § 334.08(c).

(C) "[r]eview the extent and nature of business transacted with major customers, suppliers, borrowers and lenders for indications of previously undisclosed relationships." AU § 334.08 (e).

130. Andersen was reckless in relying on management assertions about transactions with related parties. "The risk associated with management's assertions about related party transactions is often assessed as higher than for many other types of transactions because of the possibility that the parties to the transaction are motivated by reasons other than those that exist for most business transactions." AU § 334.18.

131. Andersen failed to consider an AICPA Audit Risk Alert emphasizing that:

(A) Some of the more common audit issues identified in recent litigation related to fraudulent financial reporting included:

(1) A willingness by the auditor to accept management's representations without corroboration.

(2) Allowing the client to unduly influence the scope of auditing procedures.

(3) The failure to identify risky situations, or ignoring audit risks by not applying professional skepticism and revising auditing procedures appropriately.

AICPA Audit Risk Alert – 1999/2000 at 28.

132. Andersen ignored AICPA Practice Risk Alert 95-3, which stated that "it is incumbent upon the auditor to assess the propriety of the accounting for material related-party transactions in accordance with their substance" and warned that, "[i]n the hands of the unscrupulous, an undisclosed related party is a powerful tool. Using controlled entities, principal shareholders or management can execute transactions that improperly inflate earnings by masking their economic substance or distort reported results through lack of disclosure, or can even defraud the company by

transferring funds to a conduit related party and ultimately to perpetrators." The Practice Risk Alert, at 2, warns auditors to look for "events that may indicate transactions with undisclosed related parties," including: "sales without substance, including funding the other party to the transaction so that the sales price is fully remitted;" "sales with a commitment to repurchase that, if known, would preclude recognition of all or part of the revenue;" "loans to parties that do not possess the ability to repay;" and "payments for services never rendered or at inflated prices."

133. Had Andersen performed the procedures required by AU § 334, it would have discovered, that the transactions between Enron and the SPE's could not have occurred at arm's length and that the inadequate capitalization of the SPE's required treatment of those entities as consolidated subsidiaries. Not withstanding this substantial red flag, Andersen failed to perform an appropriate investigation, or tuned a blind eye to the results of their search.

## GAAP/SEC REGULATIONS VIOLATIONS

134. Despite the fact that Enron's financial statements during the period from 12/31/97 to 6/30/01 contained billions of dollars of improper revenue and capital transactions that ultimately required massive restatement, at all relevant times during the Class Period, Andersen and the Company falsely represented that Enron's financial statements were fairly presented in accordance with GAAP.

135. The SEC requires that publicly-traded companies present their financial statements in accordance with GAAP. 17 C.F.R. § 210.4-01(a)(1). GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to defined accepted accounting practice at a particular time.

136. Financial statements filed with the SEC which are not prepared in accordance with GAAP "will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided." 17 C.F.R. § 210.4-01(a)(1).

137. As set forth in Financial Accounting Standards Board ("FASB") Statement of Concepts No. 1, one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity's financial performance during the period being presented. Concepts Statement No. 1, ¶ 42, states:

> Financial reporting should provide information about an enterprises financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of enterprise performance.

138. The representations by Andersen and the Company that Enron's financial statements were prepared in accordance with GAAP were materially false and misleading because Enron: (1) failed to disclose the existence of material related party transactions; (2) failed to disclose the failure of Enron to properly account for the related parties, and (3) failed to fully disclose the significant risks and uncertainties caused by the Company's lack of internal controls. Each of these accounting practices, misrepresentations and omissions, standing alone, was a material breach of GAAP and or SEC regulations. In the aggregate, they amounted to a complete distortion of Enron's actual financial performance - a distortion that Andersen knowingly or recklessly perpetuated throughout the Class Period.

**Improper Revenue Recognition and Valuation of Accounts Receivable**

139. The realization principle requires that revenue be earned before it is recognized. Under GAAP, revenue is recognized when the earnings process is complete and an exchange has

taken place (Statement of Financial Accounting Concepts ("FAC") No. 5, Recognition and Measurement in Financial Statements of Business Enterprises, ¶¶ 83, 84). The earnings process is not complete until collection of the sales price is reasonably assured. Id. The conditions for revenue recognition under GAAP ordinarily are met when products and services are exchanged for cash or claims to cash, and the entity has substantially performed the obligations which entitle it to the benefits represented by the revenue. Generally, a transfer of risk must occur in order to effect an "exchange" for purposes of revenue recognition under GAAP. The mere transfer of risk from one member of a consolidated group to another does not satisfy the GAAP requirement for revenue recognition or the removal of a liability from the entity's balance sheet, as was the case, when Enron purported to have completed exchanges with SPE's that it directly or indirectly controlled.

140. As detailed herein, the Company improperly recorded hundreds of millions of dollars of revenue because:

(A) revenue recorded by Enron was not supported by "persuasive evidence" that an exchange had occurred with an entity not controlled by Enron; and,

(B) collectibility was not probable absent the continuing financial involvement of Enron.

**Related Party Transactions**

141. Article 4 of Regulation S-X and GAAP, in FASB's SFAS No. 57, required Enron to disclose in its financial statements during the Class Period relevant information regarding related parties and related party transactions. Nonetheless, in violation of these required rules and procedures, Enron's financial statements failed to disclose all such parties and transactions, but more importantly, Enron failed to account for the related parties and all of the transactions with those related parties in accordance with GAAP

142. Article 1 of Regulation S-X refers to the term "related parties" as defined in SFAS 57. SFAS 57 defines "related parties" as follows:

> Related parties. Affiliates of the enterprise; entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transaction parties might be prevented from fully pursuing its own separate interest. Another party also is a related party if it can significantly influence the management operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. SFAS 57 ¶24.

143. SFAS 57 requires financial statements to include disclosures of material related party transactions, other than compensation arrangements, expense allowances, and other similar items in the ordinary course of business. (¶2) Specifically, these disclosures shall include:

(A) The nature of the relationship(s) involved;

(B) A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions of the financial statements;

(C) The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change in the method of establishing the terms from that used in the preceding period; and

(D) Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent the terms and manner of settlement. SFAS 57 ¶2.

144. SFAS 57 addresses why related party disclosures are relevant, specifically:

(A) Relationships between parties may enable one of the parties to exercise a degree of influence over the other such that the influenced party may be favored or caused to subordinate its independent interests. Related party transactions may be controlled entirely by one of the parties so that those transactions may be affected significantly by considerations other than those in arm's length transactions with unrelated parties. Some related party transactions may be the result of the related party relationship and without the relationship may not have occurred or may have occurred on different terms. SFAS 57 ¶13.

145. Likewise, SFAS 57 illustrates the necessity of related party disclosures, and in absence of such disclosures, states that the reliability of financial information is weakened:

(A) Without disclosure to the contrary, there is a general presumption that transactions reflected in financial statements have been consummated on an arm's-length basis between independent parties. However, that presumption is not justified when related party transactions exist because the requisite conditions of competitive, free-market dealings may not exist. Because it is possible for related party transactions to be arranged to obtain certain results desired by the related parties, the resulting accounting measures may not represent what they usually would be expected to represent. Reduced representational faithfulness and verifiability of amounts used to measure transactions with related parties weaken the reliability of those amounts. That weakness cannot always be cured by reference to market measures because in many cases there may be no arm's-length market in the goods and services that are the subject of the related party transactions. SFAS 57 ¶15.

146. During the Class Period, Enron recorded as revenue many transactions with parties related to Enron without disclosing the nature of the relationships and a description of the transactions. Such disclosures would have informed investors regarding the improper transactions and would have influenced investors significantly in making investment decisions regarding Enron, which was unable to record significant sales absent such related party relationships.

## SCIENTER

147. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in

the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

148. Defendants' scienter is further evidenced by the insider selling of certain of the Individual Defendants and other Enron Insiders. Defendants' scienter can be drawn from their trades, as outlined in paragraphs 13 and 15 above because of the magnitude and timing of the trades. By receiving in excess of $434 million dollars in insider trading proceeds, the Individual Defendants had plenty of motive to keep Enron's stock price artificially inflated.

149. The market for Enron's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Enron's common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Enron securities relying upon the integrity of the market price of Enron's securities and market information relating to Enron, and have been damaged thereby.

150. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Enron's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

151. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about Enron's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Enron and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

**Applicability Of Presumption Of Reliance:**
**<u>Fraud-On-The-Market Doctrine</u>**

152. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

(A) Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(B) As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

(C) Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(D) Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

153. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price. Under these circumstances, all purchasers of Enron's securities during the Class Period suffered similar injury through their purchase of Enron's securities at artificially inflated prices and a presumption of reliance applies.

## NO SAFE HARBOR

154. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint, which are not forward-looking in nature, but are hard statements of past financial data. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or

the forward-looking statement was authorized and/or approved by an executive officer of Enron who knew that those statements were false when made.

## FIRST CLAIM

### Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants

155. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

156. During the Class Period, Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Enron securities; and (iii) cause Plaintiff and other members of the Class to purchase Enron securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

157. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Enron common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued as primary participants in the wrongful and illegal conduct charged herein. Lay, Skilling and Fastow are also sued as a controlling persons of Enron, as alleged below.

158. In addition to the duties of full disclosure imposed on Defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, Lay, Skilling and Fastow had a duty to promptly

disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

159. Defendants, individually and in concert, directly and indirectly, by the use of means of instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, finances, financial condition, performance, operations, value and future prospects of Enron as specified herein. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Enron's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Enron and its business, finances, operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Enron securities during the Class Period.

160. Lay, Skilling and Fastow's primary liability, and controlling person liability, arises from the following facts: (i) they were high-level executives and/or director of the Company during the Class Period and was a member of the Company's senior management; (ii) they were, by virtue of their responsibilities and activities as senior executive officers and/or director of the Company,

privy to and participated in the preparation of the Company's financial statements and reporting of the Company's financial condition, operations and performance; (iii) Lay, Skilling and Fastow enjoyed significant personal contact and familiarity with all other key company officers and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and (iv) they were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

161. The Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Enron's operating condition, finances, value and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' misstatements of the Company's business and finances throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

162. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market prices of Enron securities were artificially inflated at all relevant times. In ignorance of the fact that the market price of Enron securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trade, and

the truth of any representations made to appropriate agencies as to the investing public, at the times at which any statements were made, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Enron securities during the Class Period at artificially high prices and were damaged thereby.

163. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known of the true financial condition, finances and business prospects of Enron, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Enron common stock during the Class Period, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

164. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

165. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

## SECOND CLAIM

**Violation Of Section 20(a) Of**

## The Exchange Act Against Individual Defendants

166. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

167. The Individual Defendants acted as controlling persons of Enron within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

168. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

169. As set forth above, Enron and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other

members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

1. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

2. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

3. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

4. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: December 6, 2001

RESPECTFULLY SUBMITTED

Lance Lee


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**CERTIFICATION OF NAMED PLAINTIFF**
**PURSUANT TO FEDERAL SECURITIES LAWS**

Leslie H. Duncan ("Plaintiff"), declares as to the claims asserted, or to be asserted, under the federal securities laws, that:
(Your Name)

1. Plaintiff has reviewed the **Enron Corp.** complaint prepared by Cauley Geller Bowman & Coates, LLP, whom I designate as my counsel in this action for all purposes.

2. Plaintiff did not purchase any common stock/securities that are the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action under the federal securities laws.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is not dependent upon execution of this Plaintiff Certification.

4. The following includes all of Plaintiff's transactions during the Class Period specified in the complaint for the common stock/securities that are the subject of this action:

| SECURITY (Common Stock, Call, Put, Bonds) | TRANSACTION (Purchase, Sale) | QUANTITY | TRADE DATE | PRICE PER SHARE/SECURITY |
|---|---|---|---|---|
| Enron Corp | Purchase | 115 | 2-27-01 | $70.26 |
| Enron Corp | Sale | 115 | 8-27-01 | $36.74 |
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**Please list additional transactions on a separate sheet if necessary.**

5. Plaintiff has not sought to serve or served as a representative party for a class in an action filed under the federal securities laws within the past three years, unless otherwise stated in the space below:

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21 day of November, 2001.

Leslie H Duncan
SIGNATURE

Please fill out the additional information. Thank you.

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